

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NESTLÉ PURINA PETCARE COMPANY,

Plaintiff/Counterclaim Defendant,

v.

BLUE BUFFALO COMPANY LTD.,

Defendant/Counterclaim Plaintiff

v.

BLUE STATE DIGITAL INC.,
PRCG/HAGGERTY LLC and JOHN DOES 1-8

Counterclaim Defendants.

Case No. 4:14-cv-00859 RWS

**PRCG/HAGGERTY LLC'S MOTION TO
DISMISS FOR FAILURE TO STATE A CLAIM**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), PRCG/HAGGERTY LLC ("PRCG") by and through its undersigned attorneys hereby respectfully moves this Court for an order dismissing Blue Buffalo Company LTD.'s Second Amended Counterclaim against PRCG. In support of its motion, PRCG states:

1. On or about May 6, 2014, Nestlé Purina Petcare Company ("Purina") filed suit in this Court against Blue Buffalo Company Ltd. ("Blue Buffalo") alleging false and misleading advertising by Blue Buffalo. Subsequently, on or about June 2, 2014, Blue Buffalo filed a Counterclaim against Purina.

2. In its initial Counterclaim, Blue Buffalo neither named nor attempted to assert any claim against PRCG. On or about November 19, 2014, Blue Buffalo filed an Amended Counterclaim against Purina. In its Amended Counterclaim, Blue Buffalo for the first time

purported to assert the same claims against PRCG as it asserts against Purina. In neither its initial Counterclaim, nor its Amended Counterclaim, did Blue Buffalo make any specific allegations relating to any alleged false statements by PRCG.

3. Then, a little more than two weeks later on December 5, 2014, Blue Buffalo filed its Second Amended Counterclaim (third Counterclaim) in which it still failed to make any specific allegations as to PRCG.^{1/} In its newest Counterclaim, Blue Buffalo indiscriminately defines “Counterclaim Defendants” as Nestlé Purina, Blue State Digital, Inc., PRCG Haggerty LLC and John Does 1–8.

4. While it is obvious that Blue Buffalo is complaining about and focusing on Purina’s alleged conduct, it vaguely and ambiguously attempts to lump PRCG and Blue State Digital, as well Defendants Does 1–8, together with Purina by referring to all of them as “Defendants” -- without describing any actual conduct of the new defendants PRCG and Blue State Digital.

5. Because the lynchpin of Blue Buffalo’s Counterclaim are alleged false statements, to state a claim under Rule 9(b) Blue Buffalo must identify the time, place and contents of the purported false statements, as well as the identity of the person making the false statement. Blue Buffalo’s Counterclaim fails to satisfy Rule 8(a) and 9(b) in alleging claims based on false advertising and misrepresentation against PRCG.

6. Each of the Nine Claims for Relief in Paragraphs 90–152 comprise nothing more than bare conclusory allegations. All of the counts are simply different purported legal theories which rely upon the same insufficiently alleged vague conduct recited in the preceding paragraphs.

^{1/} Hereinafter, all references to “Counterclaim” refer to Blue Buffalo’s Second Amended Counterclaim.

7. In addition, the Nine Claims for Relief should be dismissed for the additional reasons outlined in the accompanying Memorandum in Support.

8. As described in more detail in PRCG's Memorandum in Support of its Motion to Dismiss the Second Amended Counterclaim, incorporated by reference herein, Blue Buffalo's Second Amended Counterclaim fails to state a claim, and therefore should be dismissed with prejudice pursuant to FED. R. CIV. P. 12(b)(6).

WHEREFORE, Defendant PRCG respectfully requests that the Court grant its Motion and dismiss with prejudice the entirety of the Second Amended Counterclaim as to PRCG.

Respectfully submitted,

Dated: January 16, 2015

BRYAN CAVE LLP

/s/ Charles A. Weiss
Charles A. Weiss, 20299MO
David A. Roodman, 38109MO
Bryan Cave LLP
211 North Broadway #3600
St. Louis, Missouri 63102
Telephone: (314) 259-2000
Facsimile: (314) 259-2020
caweiss@bryancave.com
daroodman@bryancave.com
Attorneys for PRCG/Haggerty LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2015, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Charles A. Weiss